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FROM: Richard Mednick, Region 10 Office of Regional Counsel
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Persons listed on Attachment A

RE: Comments on the Proposed Rule, Asbestos, Significant New Use Rule (RIN 2070-AK45), FRL 9978-76, EPA-HQ-OPPT-2018-00159, May 31, 2018

DATE: August 10, 2018

1. OPPT defines asbestos to include six fiber types identified by AHERA/TSCA in 1986.
 - The AHERA/TSCA definition was established more than 30 years ago when EPA lacked knowledge about the existence of additional types of asbestos fibers.
 - EPA is now aware there are more than six types of asbestos fibers, including several Libby amphiboles which EPA has known about since the 1990s.
 - A Federal District Court Judge in the EPA case against W.R. Grace ruled in 2002 that the Libby Amphiboles were asbestos and hazardous substances under CERCLA.
 - Given the current state of knowledge, relying on the decades old AHERA/TSCA definition will potentially limit the notifications that EPA receives for significant new uses of asbestos.
 - All currently known fiber types should be included in the definition of asbestos so that EPA will be assured of receiving notifications and associated information about significant new uses for any asbestos.
2. OPPT identifies 14 older and currently terminated specific uses of asbestos as the only significant new uses which would be subject to the notification requirements of TSCA.
 - Since these 14 uses were voluntarily terminated by industry based on market forces, there is little likelihood of these uses being reinstituted by anyone, and so this very narrow focus by OPPT on only already obsolete practices makes the proposed rule meaningless in application.
 - This narrow focus ignores products, such as vermiculite garden soil additives, where asbestos is a contaminant. Asbestos is a mineral that may be present in the earth alongside vermiculite or other ores, and when the vermiculite or other ores are mined for use, asbestos may be present in the manufactured product. This potential use of products which contain asbestos should be part of the TSCA notification requirements since there is a potential for exposure to asbestos through use of such products.
 - OPPT neglects to provide notification requirements for newly invented uses of asbestos, and if such uses are not prohibited by Federal law, they are not possible to rule out.

- There are currently more than 1,300 listed chemical substances listed at 40 C.F.R. Part 721, Subpart E, that are subject to significant new use notification requirements. Most of these substances are subject to the notification requirements for a very broad range of general uses. For example, a multitude of chemical substances are subject to the notification requirements if they are used for any “industrial, commercial, and consumer activities.” See, i.e., 40 C.F.R. §§ 721.2925 and 721.2950. Numerous substances are also subject to the notification requirements when there is “any manner or method” of manufacturing, importing, or processing associated with “any use” of the substances without establishing a workplace protection or hazard communication program as prescribed by 40 C.F.R. § 721.63 or 721.72. In some instances, chemical substances are subject to the notification requirements for any method of disposal of the substances other than by incineration, landfill, or deep well injection. See, i.e., 40 C.F.R. §§ 721.3320 and 721.3440. In the broadest application and protections offered by the regulations, several substances are subject to the notification requirements for “any use” at all. See, i.e., 40 C.F.R. §§ 721.3160 and 721.3220.
 - Given the extreme dangers associated with exposure to asbestos, as well articulated by OPPT in the Proposed Rule, it does not adequately serve the public interest to limit the category of significant new uses for asbestos to the 14 prior and likely now obsolete uses. Consistent with the broad use categories established by EPA for more than 1,300 other chemical substances,¹ and to best prevent exposure to a lethal chemical substance such as asbestos, OPPT should expand the category for required notification to “any use” of asbestos.
3. OPPT proposes that exports of asbestos-containing articles not be subject to the TSCA notification requirements.
- OPPT goes on at some length about the exposure dangers of asbestos-containing articles when justifying the inclusion of such articles as part of the notification requirements for manufacturing, processing or distribution within the United States. The same dangers of exposure to asbestos-containing articles that may be faced by human beings within the United States could be experienced by human beings outside of the United States. A recognition by Congress in enacting TSCA is that human beings, not limited by national borders, are exposed to many chemical substances. 15 U.S.C. § 2601(a)(1).
 - As EPA has done for PCBs, OPPT should include a requirement for asbestos that obligates an exporter to provide notification when an asbestos-containing article is exported out of the United States.

¹ There is one chemical substance, alkali metal nitrites, that is subject to the notification requirements for only a single narrow use. 40 C.F.R. § 721.4740. But this one exception to the otherwise broad use categories established by EPA for all other chemical substances makes some sense in the lone use of metal nitrites are as an ingredient in metalworking fluids containing amines. *Id.*

4. OPPT indicates that uses of asbestos that are no longer occurring could be evaluated if they were to start up again.
- Given the significant number of asbestos sites that EPA has to clean up due to improper disposal or abandonment, opening the door to new uses of asbestos is not an economically-wise or health-protective idea.
 - Many developed countries have banned import or use of asbestos, including the United Kingdom, Japan, South Korea, France, Italy, Spain, Australia, Germany, the Netherlands, Finland, and many others. Brazil, who as recently as 2017 supplied most of the chrysotile for use in the US chlor-alkali industry also voted for a ban in November of 2017.
 - Rather than allow for (even with restrictions) any new uses for asbestos, EPA should seek to ban all new uses of asbestos because the extreme harm from this chemical substance outweighs any benefit – and because there are adequate alternatives to asbestos.

Attachment A

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